

REMARKS

This is a full and timely response to the outstanding non-final Office action of October 29, 2008. The Examiner has required the applicant to elect to prosecute one of three groups of claims identified in the Office Action. In response to the restriction requirement, Applicants respectfully provisionally elect to prosecute the claims of Group I, corresponding to claims 1-4 and 13-17, with traverse, as set out hereafter.

The restriction requirement is being made by the Office ostensibly because there are no common "special technical features" linking the groups. Applicants respectfully disagree and believe that after consideration of the below remarks that the requirement for restriction can be withdrawn or at least modified in part.

The Office has required election between a) Group I, claims 1-4 and 13-17, drawn to a composite textile support intended to be used as a prosthetic implant, the subject matter being classified under 4.27/2.24, b) Group II, claims 6-10, 18 and 19, drawn to a method/process of manufacture of a composite prosthetic implant, the subject matter being classified under 424/428, and c) Group III, claims 11 and 12, drawn to a method/process of implantation of a composite prosthetic implant, subject matter being classified under 623/23.72.

The Office Action opines that there are no common "special technical features" (see MPEP section 1893.03(d)), under PCT Rule 13.1, linking the above-listed inventions. Group I is not linked to Group II by corresponding technical features so as to form a single general inventive concept under PCT Rule 13.1. Group I is not linked to Group III by corresponding technical features so as to form a single general inventive concept under PCT Rule 13.1. Group II is not linked to Group III by corresponding technical features so as to form a single general inventive concept under PCT Rule 13.1.

The Applicants respectfully disagree with the above characterization, at least in part, for the following reasons. The disclosures regarding Groups I and II do share common "special technical features", namely the implementation of a lyophilisate of a biomaterial chosen from the following list: hyaluronic acid, alginates, polypeptide, and polycaprolactone.

Thus, the Applicants submit that Groups I and II are so linked as to form a single general inventive concept under PCT rules. It should be noted that the PCT rules regarding unity are more liberal than the U.S. national rules. In particular, the fact that the subject matter of Group I and the subject matter of Group II are not classified in the same class is not a relevant criterion for accessing unity under the PCT rules. Thus, it is believed that these "sets" of claims can indeed be examined together.

Applicants will concede that Group III does not fall in the same category as Groups I and II and therefore agree to withdraw claims 11 and 12 at this time, reserving the right to file a divisional application covering the subject matter of these claims in the future.

In the interests of equity and fairness, Applicants should be entitled to pursue different types of claims in the present application, particularly, apparatus claims and method claims, for the invention to fully protect the invention, because there is a different body of law pertaining to each of these different types of claims. The restriction requirement is therefore unfair to the Applicants, because it will require the Applicants to file and bear the additional cost and time delay associated with filing one or more divisional or continuing applications in order to cover each type of claim set.

Second, as provided in 35 U.S.C. § 121, restriction to one of two or more claimed inventions is proper only if the inventions are "independent and distinct." In its discussion of the propriety of restrictions, MPEP § 803 further provides that if search and examination of two or

more inventions can be made without "serious burden," the Examiner must examine them on the merits even if the claims are directed to distinct or independent inventions.

In the present case, Groups I and II, although not necessarily obvious in view of each other, are very similar in subject matter. More specifically, each pertains to prosthetic implants used, notably, within the field of parietal surgery. For this reason, Applicants respectfully submit that the inventions described in these claims are not "independent" as defined in MPEP § 803 and that the restriction requirement therefore is improper as between Groups I and II. Indeed, it appears that a search for apparatus and method would be conducted on disclosures having common special technical features. In such a situation, it clearly would not be overly burdensome on the Examiner to check for these "separate" inventions at the same time.

For at least the foregoing reasons, Applicants respectfully traverse the restriction requirement and respectfully request the Examiner to examine the claims of Groups I and II together. Applicants expressly reserve the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,


James W. Kayden, Reg. No. 31,532

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.
Suite 1500
600 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500